

Robert McGuire #83383

Name and Inmate Booking Number

Ely State Prison

Place of Confinement

Box 1989

Mailing Address

Ely, NV 89301

City, State, Zip Code

Filed	Received	Entered	Served On
Counsel/Parties of Record			
APR 18 2023			
Clerk _____ Court _____ District of Nevada Deputy _____			
By: _____			

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Robert McGuire, Plaintiff

vs.

(1) Nevada Department of,

(2) Corrections et al.,

1 (1) William Gittere,

2 (4) Calvin Johnson,

3 (1) John Doe #1,

4) Jane Doe #1 Defendant(s).

IN their individual, and  
official capacity

A.

JURISDICTION

Case No. 3:23-cv-00165

(To be supplied)

CIVIL RIGHTS COMPLAINT  
BY AN INMATE

Original Complaint

First Amended Complaint

Second Amended Complaint

Jury Trial Demanded

Pursuant to Fed. R. Civ. P.

Rule #3 Requesting Class-action  
Status pursuant to Fed. R.Civ.P.  
(Attached paperwork)

- 1) This Court has jurisdiction over this action pursuant to:

28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983

28 U.S.C. § 1331; *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971)

Other: \_\_\_\_\_

- 2) Institution/city where Plaintiff currently resides: Ely State Prison, Ely, NV

- 3) Institution/city where violation(s) occurred:

Ely State Prison - Ely, NV.

High Desert State Prison, Indian Springs, NV.

## D. CAUSE(S) OF ACTION

## CLAIM 1

1. State the constitutional or other federal civil right that was violated: 8th Amendment  
Right to be free from cruel & unusual punishment

2. Claim 1. Identify the issue involved. Check **only one**. State additional issues in separate claims.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Medical care	<input type="checkbox"/> Mail
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Property
<input type="checkbox"/> Access to the court	<input type="checkbox"/> Excessive force by officer	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Threat to safety	<input checked="" type="checkbox"/> Other: <u>Lack of Any outdoor recreation</u>	

3. Date(s) or date range of when the violation occurred: Aug. 2020 thru Dec. 2020 thru 6/2022

4. Supporting Facts: State as briefly as possible the FACTS supporting Claim 1. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

August 2020 I was incarcerated at Ely State Prison I (and other inmates) on unit 5A/B at Ely State Prison were denied ANY/ ALL outdoor Rec. i Locked in cells 24 hours A day - 7 days A week. Warden William Gittere was aware of this i made guidelines, memos, rules that enforced this i Allowed it to continue. August 2020 unit 5A/B At Ely State Prison were transferred to High Desert State Prison unit 3A/B - And we were continually deprived of ANY/ ALL outdoor recreation activity i Locked in cells 24 hours per day on solitary confinement. Ely State Prison has single outdoor rec. yard areas for each tier. High Desert State Prison has 9 cages for each unit i inmates can be spaced apart. Staff could have given us outdoor recreation i followed ANY/AII covid quarantine. Staff used covid protocols to avoid doing ANY/AII work. We had masks i could have been kept w/ just our cellys i given outdoor Rec. Outdoor/out-of-cell recreation is federally mandated at 5 hrs (minimum) per week. Additional page.

**CLAIM 2**

1. State the constitutional or other federal civil right that was violated: 14<sup>th</sup> Amendment  
The right to due process to be deprived of my liberty

2. **Claim 2.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Medical care	<input type="checkbox"/> Mail
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Property
<input type="checkbox"/> Access to the court	<input type="checkbox"/> Excessive force by officer	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Threat to safety	<input checked="" type="checkbox"/> Other: <u>Denial of out-of-cell recreation.</u>	

3. Date(s) or date range of when the violation occurred: Aug. 2020 thru Dec. 2020. thru 6-2020

4. **Supporting Facts:** State as briefly as possible the FACTS supporting Claim 2. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

I was deprived my liberty by All 3 defendants by the memos, rules, Structure of rules & protocols put in place at Ely State Prison & High Desert State Prison - And they allowed us to continue to be deprived of outdoor Rec. once they were advised it was/is against our constitutional rights. This is a Liberty interest because this is An Atypical & Significant hardship compared to ordinary incidents of prison life as most inmates will never be deprived of out-of-cell & outdoor recreation for over 3 months straight- in their entire prison sentence & they (Admin)(defendant's) didn't offer US ANY due process to deprive us of this liberty- No hearings, and took over 2 yrs to allow me to complete Administrative Remedies, Took 1 yr just to give me the 2nd level Response to grievance # 20063114341. Also, by having 1 hr. outdoor rec. for 18 months Additional Pg.

**B. DEFENDANTS**

1. Name of first Defendant: William Gittere. The first Defendant is employed as:  
Warden at Ely State Prison.  
 (Position of Title) (Institution)
2. Name of second Defendant: Calvin Johnson The second Defendant is employed as:  
Warden at High Desert State Prison  
 (Position of Title) (Institution)
3. Name of third Defendant: John Doe #1. The third Defendant is employed as:  
Associate Warden at High Desert State Prison.  
 (Position of Title) (Institution)
4. Name of fourth Defendant: Jane Doe #1. The fourth Defendant is employed as:  
Associate Warden at High Desert State Prison.  
 (Position of Title) (Institution)
5. Name of fifth Defendant: \_\_\_\_\_ The fifth Defendant is employed as:  
 \_\_\_\_\_ at \_\_\_\_\_.  
 (Position of Title) (Institution)

If you name more than five Defendants, answer the questions listed above for each additional Defendant on a separate page.

**C. NATURE OF THE CASE**

Briefly state the background of your case.

I was denied ANY & ALL outdoor recreation yard time, partly taking place while at Ely State Prison & part taking place at High Desert State Prison. I WASN'T offered or given a chance for recreation for 3 months straight. I exhausted Administrative Remedies 3-14-23. Started the process 10-23-20 #D0063114341. INMATE Kevin Clausen (High Desert State Prison) Already filed civil suit on same issue/time.

Additional Page

C.: Nature of Case

After Dec. 2020 (unit 3A/B) only received  
out-of-cell recreation / outdoor recreation  
for 1 hour per week as part of  
regular operations and that lasted  
from Dec. 2020 until June 1, 2022.

Additional Page #1

D. Cause of ActionClaim 1

Defendants Calvin Johnson and John Doe#1, Jane Doe#1, made, created, and allowed staff in unit 3A/B at High Desert State Prison - to deny us ANY all out-of-cell/outdoor recreation for over 3 months straight - even when we had proper covid masks & could maintain over 10ft. distance for inmates - by skipping a cage for quarantine protocols & could keep us cuffed to cage, keep us locked in the cage, and keep us completely separated. So, any all ~~other~~ threats to safety could be eliminated: Safety protocols followed & inmates separated and still give us outdoor recreation. We were NOT/ ARE NOT ALLOWED to work-out OR do recreation activities ON the tier at Ely State Prison, OR High Desert State Prison, NOR were we offered to go to the gym (indoors) at High Desert State Prison, OR at Ely State Prison.

After Dec. 2020 - unit 3A/B ONLY received 1 hour of outdoor recreation for 18 months straight from Dec. 2020 until June 1, 2022 as regular programs.

[Additional Page #2]

\* Defendants all showed deliberate indifference to our 24 hour confinement in cells w/o proper exercise time which has been proven to be a huge factor in psychological, physical well-being. This occurred in excess of total 18 months of inadequate recreation time, amounting to cruel & unusual punishment.

Claim 2

from Dec. 2020 until June 1, 2022.  
 It was part of regular program for  
 unit 3A/B & we didn't get any gym time,  
 and NO exercise allowed ON-tiers & during  
 tier-time ON 3A/B. Defendants Calvin Johnson,  
 John Doe#1, Jane Doe#1 All Knew of these constitutional  
 deprivations and allowed them to continue long-term.

Additional Pg # 3

\* Defendants #1, #2, #3, and #4 knew of our lack of  
 recreation, lack of proper due process/classifications  
 to allow plaintiff to be housed at H.D.S.P.  
 unit 3A/B. Defendants ~~other~~ were deliberately indifferent  
 to our liberty interest & for depriving us of such  
 liberty by denying us ANY/ALL hearings.

These were NOT quarantine/lock-down units.  
Senate Bill #187 of Nevada Senate allows 5 hours  
 off unit for exercise/programs & we were denied  
 that long-term & defendants received plenty of  
 grievances, "talks", kites to give them notice  
 of continued deprivations.

F. Request for Relief

That inmates are receiving some type of outdoor /out-of-cell recreation during lockdowns, and quarantines. As these prisons have spent an adequate amount of tax-payer money to have outside rec. cages, and gyms, and yards built that maintain security, distance, and still provide out-of-cell fresh-air & chance to exercise outside of small cells that are often improperly cooled, have no fresh-air /only recirculated air & the ventilation systems are often down & not working proper & outside temperatures reaching 110° & above at High Desert State Prison.

Additional Page to page #6  
Additional Page #4

**E. PREVIOUS LAWSUITS**

1. Have you filed any other lawsuits while incarcerated?  Yes  No
2. Has this Court or any other court designated you as subject to "three strikes" under 28 U.S.C. § 1915(g)?  Yes  No
3. If you have "three strikes" under 28 U.S.C. § 1915(g), does this complaint demonstrate that you are "under imminent danger of serious physical injury?"  Yes  No

**F. REQUEST FOR RELIEF**

I believe I am entitled to the following relief: Compensatory Relief,  
Special Damages, Punitive Damages in the  
Amount of \$150 per day of denial of yard per  
inmate amounting to \$9,450.00 plus all attorney  
fees, filing fees, prose time spent on civil suit.  
Injunctive Relief as follows: monitor to go to  
Ely State Prison / High Desert State Prison to be sure - Additional pg

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Robert S. McGuire

(name of person who prepared or helped prepare this complaint if not the plaintiff)

Robert S. McGuire

(signature of plaintiff)

3/16/23  
 (date)

**ADDITIONAL PAGES**

You must answer all questions concisely in the proper space on the form. Your complaint may not be more than 30 pages long. It is not necessary to attach exhibits or affidavits to the complaint or any amended complaint. Rather, the complaint or any amended complaint must sufficiently state the facts and claims without reference to exhibits or affidavits. If you need to file a complaint that is more than 30 pages long, you must file a motion seeking permission to exceed the page limit and explain the reasons that support the need to exceed 30 pages in length.